

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER McARTHUR,

Plaintiff,

v.

THE ROCK WOOD FIRED PIZZA &
SPIRITS, *et al.*,

Defendants.

)
) CASE NO. C14-0770 RSM
)
)
) ORDER GRANTING IN PART AND
) DENYING IN PART PLAINTIFF'S
) MOTION FOR PARTIAL SUMMARY
) JUDGMENT
)
)
)

THIS MATTER comes before the Court on Plaintiff's Motion for Partial Summary Judgment. Dkt. #65. Although not entirely clear, it appears that Plaintiff is seeking an Order from this Court stating that Defendant The Wedge Corporation is subject to the requirements of the Fair Labor Standards Act ("FLSA"). Dkts. #65 and #81. She does not seek a ruling on the merits of the claims she brings under the FLSA, but rather seeks a dismissal of Defendants' affirmative defense that her claims are not covered by the FLSA. *Id.*

Defendants appear to concede that The Wedge Corporation is subject to the requirements of the FLSA. *See* Dkt. #78 at 6-8. However, Defendants oppose the dismissal of their affirmative defense on several grounds, but primarily because there are numerous issues of material fact in dispute as to the merits of Plaintiffs' claims. Dkt. #78.

1 Having reviewed Plaintiff's motion, the opposition thereto, and reply in support thereof,
2 along with the Declarations and Exhibits thereto, and the remainder of the record, the Court
3 hereby finds and ORDERS:

- 4 1. Plaintiff's Motion for Partial Summary Judgment (Dkt. #65) is GRANTED IN
5 PART AND DENIED IN PART. To the extent Plaintiff seeks an Order stating that
6 Defendant The Wedge Corporation is subject to the requirements of the FLSA, there
7 appears to be no dispute that it is. However, nothing in this Order is intended to
8 suggest that Plaintiff's claims under the FLSA have merit, or that she will succeed
9 on her claims as to any of the Defendants. Likewise, the Court will not dismiss
10 Defendants' affirmative defense that the FLSA does not apply to Plaintiff's claims.
11 That affirmative defense goes to the merits of each of Plaintiff's claims that she
12 raises under the FLSA and is brought on behalf of all of the Defendants. Plaintiff
13 does not address all Defendants in her motion, or explain why the defense should be
14 dismissed as to all of them. In addition, the Court agrees that numerous issues of
15 fact in dispute on the several claims that Plaintiff raises under the FLSA make the
16 dismissal of Defendants' affirmative defense inappropriate at this time.
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20 2. Both parties have asked the Court to strike material from the briefs and Declarations
21 submitted in support of this motion. The Court DENIES those requests as moot.
22 Even if the Court disregarded the materials sought to be stricken, its conclusion
23 would remain the same.
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25 3. Finally, to the extent that Defendants have requested the dismissal of certain of
26 Plaintiffs' claims, the Court DENIES such requests. Defendants have improperly
27 raised those requests through a response brief, which does not contain any cross-
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1 motion to dismiss or for summary judgment in their favor, and does not allow the
2 Plaintiff an opportunity to substantively respond to the requests given the limitations
3 of the reply brief.

4 DATED this 13 day of February, 2017.

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8 RICARDO S. MARTINEZ
9 CHIEF UNITED STATES DISTRICT JUDGE
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